



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,266	07/19/2001	Gary D. Jerdee	71163-03	1248
7590 10/23/2003				
Mark L. Davis P.O. Box 9293 Gray, TN 37615-9293				
EXAMINER				
JUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1771				

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

09/909,266

Applicant(s)

JERDEE ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 22-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 0703
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed July 1, 2003, has been entered. Claims 1, 22-27, 30, and 31 have been amended as requested. The pending claims are 1 and 22-31.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection set forth in section 5 of the last Office Action. Additionally, said amendment is sufficient to withdraw the claim objection set forth in section 6. Furthermore, the submission of the IDS is sufficient to overcome the objection set forth in section 2 of the last Office Action.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 27, 30, and 31 stand rejected under 35 USC 102(b) as being anticipated by the cited Taft patent as set forth in section 11 of the last Office Action.
5. Claims 1, 25, and 26 are rejected under 35 USC 102(b) as being anticipated by the cited Taft patent.

Said claims are now rejected by the Taft reference due to a review of the Taft disclosure. Specifically, it is noted that Taft teaches the presence of styrene-butadiene as the rubber component of the adhesive and/or as a tackifier for said adhesive (col. 3, lines 44-51 and col. 5, lines 54-59). Thus, Taft teaches an adhesive blend of EMA and styrenic copolymers of butadiene, as recited in claim 1.

The limitations of claims 25 and 26 are analogous to those of claims 30 and 31, which were previously rejected under 102 in section 11 of the last Office Action.

6. Claims 27, 30, and 31 stand rejected under 35 USC 102(b) as being anticipated by the cited Bova patent as set forth in section 12 of the last Office Action.

7. Claims 23-31 stand rejected under 35 USC 102(b) as being anticipated by the cited Peoples patent as set forth in section 13 of the last Office Action.

***Claim Rejections - 35 USC § 102/103***

8. Claims 1 and 22 are rejected under rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over the cited Peoples patent.

The indicated allowability of claim 22 is hereby withdrawn due to a review of said Peoples reference. Specifically, Peoples teaches a coextruded layer of an ethylene polymer or copolymer (col. 10, lines 14- 22). Thus, Peoples teaches a coextruded blend of EMA and an ethylene polymer as adhesive carpet backing. Peoples does not explicitly state the ethylene polymers include the claimed LDPE, LLDPE, HDPE, ULDPE, or metallocene-based polyethylenes. However, these specific polyethylenes inherently fall within the broad class of polyethylene polymers and it is well accepted in the art that the claimed polyethylenes are conventional polyethylenes. Thus, claims 1 and 22 are anticipated by the cited Peoples reference.

In the alternative, it would have been obvious to one skilled in the art to select the claimed, yet well-known, conventional polyethylenes as the specific polyethylene for Peoples'

broad disclosure of polyethylene polymers. Motivation do so would be availability of said polyethylenes. Therefore, claims 1 and 22 are obvious over the cited Peoples reference.

***Claim Rejections - 35 USC § 103***

9. Claim 29 stands rejected under 35 USC 103(a) as being unpatentable over the cited Taft or Bova patents in view of the cited Fink or Peoples patents as set forth in section 15 of the last Office Action.

10. Claim 24 is rejected under 35 USC 103(a) as being unpatentable over the cited Taft patent, as applied to claim 1 above, in view of the cited Fink or Peoples patents.

Claim 24 is rejected for reasons analogous to those presented in the rejection of claim 29 in section 15 of the last Office Action.

***Response to Arguments***

11. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

12. Applicant traverses the above Taft rejection by asserting the reference does not teach or suggest an adhesive material that omits an atactic polypropylene and vulcanized rubber (Amendment, page 6, 1<sup>st</sup> paragraph). This argument is unpersuasive in that the present claims do not necessarily exclude the presence of said polypropylene or rubber, despite applicant's amendment deleting the recitation to polypropylene and rubber. Specifically, the claim employs the transitional phrase "consisting essentially of." According to MPEP 2111.03, absent a showing that the presence of said rubber and polypropylene materially affect the basic and novel

Art Unit: 1771

characteristics of the invention, said phrase is examined as open language (i.e., "comprising").

Since, there is nothing on record evidencing such a showing and, in fact, the original claim language actually supports the fact that the invention is not materially affected by the presence of said propylene and rubber, the claims are read as "comprising" and the rejection is maintained.

13. With respect to the Bova rejection, applicant traverses on the grounds that the reference teaches the addition of a tackifier selected from piccopale and amorphous polypropylene (Amendment, page 6, 2<sup>nd</sup> paragraph). In response, it is first noted that the presence of a tackifier is not a requirement of the Bova invention, but rather just a preferred embodiment. Secondly, it is reiterated that the open language of the claims does not presently exclude the presence of a tackifier. Hence, said rejection is also maintained.

14. With respect to the Peoples rejection applicant argues that the present invention does not include an elastomer or ethylene-propylene copolymers as is required by Peoples. In response, it is argued that like independent claim 27, independent claim 1 contains open language (i.e., "comprising"). Thus, the presence of said elastomer or ethylene-propylene copolymer is not excluded from the claimed invention. Secondly, as discussed above, the Peoples reference still anticipates claim 1, despite the amendment deleting the recitation to the elastomer and ethylene-propylene copolymers. Specifically, Peoples teaches an adhesive comprising EVA and/or EMA and an olefin elastomer coextruded with a layer of an ethylene polymer or copolymer (col. 9, line 51-col. 10, line 22). Thus, Peoples teaches the presently claimed blend of EMA and the recited polyethylenes of claims 1 and 22.

15. With respect to the 103 rejection of claim 29, applicant merely relies upon the traversal of the individual references (Amendment, page 7, 2<sup>nd</sup> paragraph). However, as noted above, said

Art Unit: 1771

traversals are found unpersuasive. Additionally, applicant argues Fink teaches the addition of an elastomer. This argument is unpersuasive since Fink is not relied upon for the carpet adhesive composition but merely to teach the claimed thickness of an adhesive backing is known. Therefore, the rejection is maintained.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
CHERYL A. JUSKA  
PRIMARY EXAMINER